

UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

|                     |   |                      |
|---------------------|---|----------------------|
| ALBERT BROOKE,      | : |                      |
|                     | : |                      |
| Plaintiff           | : |                      |
|                     | : |                      |
| v.                  | : | CIVIL NO. 4:CV-08-07 |
|                     | : |                      |
| MR. PIAZZA, ET AL., | : | (Judge McClure)      |
|                     | : |                      |
| Defendants          | : |                      |

**MEMORANDUM**

January 7, 2008

**Background**

Albert Brooke (“Plaintiff”), an inmate presently confined in the State Correctional Institution, Coal Township, Pennsylvania (“SCI-Coal Twp.”), initiated this *pro se* civil rights action. Named as Defendants are employees of the Pennsylvania Department of Corrections and SCI-Coal Twp. See Record document no. 1, ¶ III. The complaint is accompanied by a request for leave to proceed *in forma pauperis*. For the reasons set forth below, Brooke’s complaint will be dismissed, without prejudice pursuant to the screening provisions of 28 U.S.C. § 1915(g).

Brooke sets forth a list of alleged constitutional violations including claims of: racial discrimination and harassment; denial of parole; violation of his freedom of speech; denial of equal access to the courts; lack of a functional inmate grievance

system; false advertisement by prison staff with respect to signs encouraging the reporting of sexual harassment; and perjury by staff. The gist of his present complaint is that he was improperly placed in SCI-Coal Twp.'s Restricted Housing Unit ("RHU") for a period of six (6) days following an altercation with another inmate. The other prisoner involved in the incident was of a different race and purportedly subjected the Plaintiff to threats as well as racially and sexually based verbal harassment. Brooke contends that he was subjected to harsher punishment than that given to the other prisoner because of his race. See id. at ¶ IV. He adds that the correctional staff failed to investigate his claim of sexual harassment. As relief, Brooke seeks monetary damages.

### **Discussion**

Under § 1915(g), a federal civil action by a prisoner proceeding *in forma pauperis* is barred if he or she:

has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Brooke, while incarcerated, previously initiated the following civil actions which were dismissed by this Court under 28 U.S.C. § 1915 as being frivolous:

Brooke v. Luzerne County Prison, et. al., Civil No. 4:94-CV-1024 (M.D. Pa. July 26, 1994)(complaint *sua sponte* dismissed as frivolous); Brooke v. Bott, Civil No. 4:94-CV-453 (M.D. Pa. April 25, 1994)(*sua sponte* dismissal on grounds that complaint is

frivolous); Brooke v. Carbon County Children & Youth, et al., Civil No. 4:94-CV-1203 (M.D. Pa. Aug. 15, 1994)(complaint *sua sponte* dismissed as frivolous); Brooke v. Urbanski, Civil No. 4:94-1205, (M.D. Pa. Aug. 15, 1994)(*sua sponte* dismissal on the basis of frivolousness).

The alleged unconstitutional conduct did not place this inmate in danger of imminent "serious physical injury" at the time his complaint was filed on January 2, 2008. See Abdul-Akbar v. McKelvie, 239 F.3d 307, 312 (3d Cir. 2001), cert. denied, 533 U.S. 953 (2001). Pursuant to the standards announced in §1915(g), Brooke's present civil rights action is barred under § 1915(g). An appropriate Order will enter.

s/ James F. McClure, Jr.  
JAMES F. MCCLURE, JR.  
United States District Judge

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|                     | : |                      |
| Defendants          | : | (Judge McClure)      |
|                     | : |                      |

**ORDER**

January 7, 2008

In accordance with the accompanying Memorandum,

**IT IS HEREBY ORDERED THAT:**

1. The Plaintiff's complaint is dismissed without prejudice pursuant to 28 U.S.C. § 1915(g).
2. The Clerk of Court is directed to close the case.
3. Any appeal from this Order will be deemed frivolous, without probable cause and not taken in good faith.

s/ James F. McClure, Jr.  
JAMES F. MCCLURE, JR.  
United States District Judge